

Exhibit List

- Exhibit A: Plaintiffs' FOIA Request (April 17, 2012)
- Exhibit B: Letter from DHS/ICE to Plaintiffs (April 23, 2012)
- Exhibit C: Letter from DHS/ICE to Plaintiffs (May 25, 2012)
- Exhibit D: Plaintiffs' Notice of Administrative Appeal (June 11, 2012)
- Exhibit E: Plaintiffs' Administrative Appeal (June 18, 2012)
- Exhibit F: DHS/ICE Denial of Plaintiffs' Appeal (September 25, 2012)

Exhibit A



FOIA Office
U.S. Immigration and Customs Enforcement
800 North Capitol St., NW
5th Floor, Suite 585
Washington, DC 20536
ICE-FOIA@ice.dhs.gov
FAX: 202-732-0660

April 17, 2012

VIA FACSIMILE AND ELECTRONIC MAIL

RE: Freedom of Information Act Request Regarding Individuals Placed into Removal Proceedings as a Result of Contact with State and Local Law Enforcement Officers in Georgia

Dear ICE FOIA Unit,

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 on behalf of the Georgia Latino Alliance for Human Rights (GLAHR), the National Day Laborer Organizing Network (NDLON), and the American Civil Liberties Union Foundation of Georgia (ACLU of Georgia) for information regarding individuals placed into removal proceedings as a result of contact with state and local law enforcement agencies in the state of Georgia. We ask that you please direct this request to all appropriate offices and departments within the agency, including, but not limited to, the Atlanta Field Office of Enforcement and Removal Operations.

A. PURPOSE OF REQUEST

The purpose of this request is to obtain information for the public about individuals placed into removal proceedings as a result of contact with state and local law enforcement agencies in the state of Georgia. This information will enable the public to monitor the growing collaboration between Georgia's state and local police and federal immigration officials.

Over the past several years, Georgia law enforcement officials have become involved in immigration enforcement efforts to an unprecedented degree. To date, five jurisdictions in Georgia have signed 287(g) Agreements, under which local officers may perform certain functions of federal immigration officials. As of December 2011, the entire state of Georgia has been activated in the "Secure Communities" program. On May 13, 2011, Governor Deal signed into law HB 87, which directs state and local law enforcement officials to conduct routine

immigration status investigations and generally makes the enforcement of federal civil immigration law a matter of primary concern for state and local police.¹

The effects of this unprecedented degree of local police involvement in immigration enforcement are as yet unknown. Initial reports document disturbing instances of racial profiling and other constitutional violations.² Available statistics indicate that a large percentage of individuals transferred to ICE from Georgia law enforcement officials have never been convicted of a crime, raising the question whether there was a legitimate basis for their arrest.³ The information sought in this request will enable public oversight and monitoring of Georgia's experiment with immigration law enforcement.

B. DOCUMENTS REQUESTED

1. Copies of Form I-213 ("Record of Deportable/Inadmissible Alien") for each individual transferred to ICE following an arrest by state or local law enforcement officials in Georgia between February 13, 2007 and the present. This includes, but is not limited to, all Form I-213s issued between February 13, 2007 and the present for which the location of arrest is in Georgia, the Method of Location/Apprehension is coded OA ("Other Agency"), and the Narrative section mentions a Georgia state or local law enforcement agency.
2. Any data or statistics regarding individuals transferred to ICE following an arrest by state or local law enforcement officials in Georgia between February 13, 2007 and the present. This includes, but is not limited to, data or statistics breaking down these individuals by criminal history, priority "level", race, and/or country of origin.
3. All communications between ICE and Georgia state and local law enforcement agencies between February 13, 2007 and the present on the following topics:
 - The transfer of an individual/individuals from the state or law enforcement agency to ICE
 - Claims of US citizenship by individuals subject to immigration detainers
 - Complaints related to immigration detainers
 - The 48-hour limitation on detention pursuant to an immigration detainer, and any claims that an individual has been detained beyond that limit
 - Crime victims and witnesses
 - Racial profiling
 - "HB 87" (the Illegal Immigration Reform and Enforcement Act of 2011)
4. Copies of all immigration detainers (Form I-247) issued by ICE to a Georgia law enforcement entity on or after January 1, 2011, as well as the records reflecting the following information:

¹ Some sections of HB 87 have been preliminary enjoined as a result of a lawsuit brought by the ACLU and other organizations on behalf of GLAHR and other plaintiffs. *See GLAHR, et. al., v. Deal*, No. 1:11-CV-1804-TWT, Order (N.D. Ga. June 27, 2011).

² *See, e.g.,* ACLU OF GEORGIA, THE PERSISTENCE OF RACIAL PROFILING IN GWINNETT: TIME FOR ACCOUNTABILITY, TRANSPARENCY, AND AN END TO 287(G) (March 2010); ACLU FOUNDATION OF GEORGIA, TERROR AND ISOLATION IN COBB COUNTY: HOW UNCHECKED POLICE POWER UNDER 287(G) HAS TORN FAMILIES APART AND THREATENED PUBLIC SAFETY (Oct. 2009).

³ *See* Secure Communities Nationwide Interoperability Statistics through February 29, 2012, *available at* http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2012-to-date.pdf.

- The date on which the detainer was issued
- The date, if any, on which the detainer was cancelled or lifted, as well as the reason the detainer was cancelled or lifted
- The offense code, if any, and any records describing the meaning of the offense code
- The date (if any) that the subject of the detainer was taken into ICE custody
- The receiving agency, jail, or police department to whom the detainer was sent
- The nationality and/or country of origin of the subject of the detainer

C. THE REQUESTERS

GLAHR is a statewide organization that was created to educate and organize Latinos in their own communities regarding laws and customs with the purpose of obtaining community participation in making decisions to take action in defense of their civil rights, and empower low-income Latinos without regard to their immigration status.

NDLON is a national network of 42 member organizations that works to improve the lives of day laborers in the United States. To this end, NDLON works to unify and strengthen its member organizations to be more strategic and effective in their efforts to develop leadership, mobilize, and organize day laborers in order to protect and expand their civil, labor and human rights. NDLON fosters safer more humane environments for day laborers, both men and women, to earn a living, contribute to society, and integrate into the community.

The ACLU of Georgia is the Georgia affiliate of the national ACLU. Its mission is to advance the cause of civil liberties in Georgia, with emphasis on the rights of free speech, free press, free assembly, freedom of religion, due process of law and to take all legitimate action in the furtherance of such purposes without political partisanship.

D. FEE WAIVER

The requesters are entitled to a waiver of all costs because disclosure of the records sought “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Requesters are also entitled to a waiver of all costs because they are representatives of the news media. 6 C.F.R. § 5.11(d)(1).

The records sought here will significantly contribute to public understanding of collaboration between Georgia state and local police and ICE. Moreover, as nonprofit, nonpartisan organizations, GLAHR, NDLON and the ACLU of Georgia are well situated to disseminate the information gained from this request to the general public.

GLAHR plans to disseminate information obtained as a result of this FOIA by means of its daily live radio programming, heard in Atlanta on AM Radio 1310 and throughout the world online by way of the GLAHR website, www.glahr.org.

In addition, in accordance with their general practice, NDLON and the ACLU of Georgia plan to disseminate records disclosed as a result of this FOIA request to the public. Both NDLON and the ACLU of Georgia routinely obtain information about government activity

(including through FOIA requests), analyze that information, and widely publish and disseminate that information to the press and to the public in a variety of ways.⁴

For example, the ACLU of Georgia publishes a biweekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail.⁵ The ACLU of Georgia also publishes, analyzes, and disseminates information through its heavily visited website, www.acluga.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues the ACLU focuses upon. The website includes features on information obtained through the FOIA.⁶ In addition, the ACLU of Georgia also regularly publishes books, “Know Your Rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.⁷

Finally, public records disclosed as a result of this FOIA request will also be published, analyzed, and disseminated on the websites of GLAHR, NDLON, and the ACLU of Georgia. These websites reach wide, diverse audiences, and are visited by many thousands of visitors each month.

E. EXPEDITED PROCESSING

Expedited processing of this request is necessary both because there is a “compelling need” for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), and because there is “[a]n urgency to inform the public about an actual or alleged federal government activity” and, as described above, the request is “made by a person primarily engaged in disseminating information.” 6 C.F.R. § 5.5.

⁴ For examples of analysis, publication, and dissemination of information by the ACLU of Georgia, *see, e.g.*, AZADEH SHAHSHAHANI, ACLU OF GEORGIA, THE PERSISTENCE OF RACIAL PROFILING IN GWINNETT, TIME FOR ACCOUNTABILITY, TRANSPARENCY, AND AN END TO 287(G), Mar. 2010, *available at* <http://www.acluga.org/gwinnettracialreportfinal.pdf> (describing incidents of racial profiling that have occurred under the auspices of Gwinnett County’s 287(g) agreement) ; ALEXANDRA STANCZYK, ACLU OF GEORGIA, BEST PRACTICES FOR DISMANTLING THE SCHOOL TO PRISON PIPELINE, Aug. 8, 2007, *available at* <http://www.acluga.org/docs/schooltoprison.pdf> (describing trends in public education and juvenile justice disproportionately affecting people of color that result in high incarceration rates among youths).

For examples of analysis, publication and dissemination of information by NDLON, *see, e.g.*, www.uncoverthetruth.org; RESTORING COMMUNITY: A NATIONAL COMMUNITY ADVISORY REPORT ON ICE’S FAILED ‘SECURE COMMUNITIES’ PROGRAM, *available at* <http://altopolimigra.com/s-comm-shadow-report/>.

⁵ Archived copies of the newsletter can be viewed here: <http://archive.constantcontact.com/fs022/1102424221285/archive/1102688938336.html>. The electronic newsletter is also posted on the ACLU of Georgia’s website, www.acluga.org, and Facebook page, www.facebook.com/pages/ACLU-of-Georgia/116855228000.

⁶ *See, e.g.*, Press Release, ACLU Sues Pentagon for Documents on Peace Groups, June 14, 2006, *available at* <http://www.acluga.org/docs/docket/SpyFiles/PentagonSpyFileNatlPressRelease.pdf> (describing FOIA request for documents relating to surveillance of domestic groups and activists involved in protests). *See also* Press Release, ACLU Intervenes In Georgia Voting Rights Act Challenge, July 7, 2010, *available at* <http://www.acluga.org/news/2010/07/07/aclu-intervenes-in-georgia-voting-rights-act-challenge/> (describing the intervention of the ACLU of Georgia in a challenge to Georgia state voting practices under Section 5 of the Voting Rights Act).

⁷ *See, e.g.*, ACLU OF GEORGIA, GET YOUR VOTE BACK, *available at* <http://www.acluga.org/voting.rights.html> (providing information on how to register to vote following conviction for a felony).

The public has a pressing interest in obtaining information about the effects of Georgia's unprecedented level of participation in immigration enforcement. Currently, little is known about how the increasing collaboration between Georgia police and ICE is affecting police work in Georgia. Similarly, little is known about how Georgia's increasing involvement in immigration enforcement is affecting federal immigration enforcement efforts. Information responsive to this request will shed light on these questions of significant public concern.

F. CERTIFICATION

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(d)(3).

If this request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we expect to receive your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If you have any questions regarding the processing of this request, please contact Jessica Karp at 213-380-2214, jkarp@ndlon.org, or Azadeh Shahshahani at 404-574-0851, ashahshahani@acluga.org.

If any records are available in electronic form, please furnish them in electronic form. Please furnish all responsive Records to:

Azadeh Shahshahani
ACLU of Georgia
1900 The Exchange SE, Suite 425
Atlanta, GA 30339

Sincerely,



Jessica Karp
Staff Attorney
National Day Laborer
Organizing Network

Adelina Nicholls
Executive Director
Georgia Latino Alliance
for Human Rights



Azadeh Shahshahani
National Security/Immigrants' Right
Immigrants' Rights Project Director
ACLU Foundation of Georgia

Exhibit B

U.S. Department of Homeland Security
500 12th Street SW, STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

April 23, 2012

JESSICA KARP
STAFF ATTORNEY
NATIONAL DAY LABORER ORGANIZING NETWORK
675 S. PARK VIEW ST. SUITE B
LOS ANGELES, CA 90057

RE: ICE FOIA Case Number 2012FOIA11435

Dear Ms. Karp:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated April 17, 2012. You have requested copies of the following records dated February 13, 2007 to the present:

1. Copies of I-213 forms for each individual transferred to ICE following an arrest by state or local law enforcement officials in Georgia between February 13, 2007 and the present for which the location of arrest is in Georgia, the Method of Location/Apprehension is coded OA ("Other Agency"), and the Narrative section mentions a Georgia state or local law enforcement agency.
2. Any data or statistics regarding individuals transferred to ICE following an arrest by state or local law enforcement officials in Georgia between February 13, 2007 and the present, including, but not limited to, data or statistics breaking down these individuals by criminal history, priority level, race, and/or country of origin.
3. All communications between ICE and Georgia state and local law enforcement agencies between February 13, 2007 and the present on the following topics:
 - a. The transfer of an individual/individuals from the state or law enforcement agency to ICE;
 - b. Claims of US citizenship by individuals subject to immigration detainers;
 - c. Complaints related to immigration detainers;
 - d. The 48-hour limitation on detention pursuant to an immigration detainer, and any claims that an individual has been detained beyond that limit;
 - e. Crime victims and witnesses;
 - f. Racial profiling; and
 - g. HB 87 (the Illegal Immigration Reform and Enforcement Act of 2011).
4. Copies of all immigration detainers (form I-247) issued by ICE to a Georgia law enforcement entity on or after January 1, 2011, as well as the records reflecting the following information:
 - a. The date on which the detainer was issued;
 - b. The date, if any, on which the detainer was cancelled or lifted, as well as the reason the detainer was cancelled or lifted;
 - c. The offense code, if any, and any records describing the meaning of the offense code;

- d. The date, if any, that the subject of the detainer was taken into ICE custody;
- e. The receiving agency, jail, or police department to whom the detainer was sent; and
- f. The nationality and/or country of origin of the subject of the detainer.

You have requested media status, expedited processing and a waiver of all applicable fees.

As it relates to your request for media status, I have determined that the Georgia Latino Alliance for Human Rights, the National Day Laborer Organizing Network, and the American Civil Liberties Union Foundation of Georgia have not met the threshold criteria to be considered representatives of the news media, as these organizations do not appear to be primarily engaged in the dissemination of news. To make this determination, I reviewed your FOIA request and the websites of each requestor.¹

As to your request for expedited review, 5 U.S.C. § 552(a)(6)(E)(i) states that “each agency shall promulgate regulations ... providing for expedited processing of requests for records.” There are two categories of requests that merit expedited review under DHS FOIA regulations: (1) requests for which a “lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;” or (2) where there is “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”²

It appears that you have requested expedited treatment on the basis of “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”³ Under DHS FOIA regulations, a requester seeking expedited treatment on this basis, “if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation.”⁴ Such requests must also “establish a particular urgency to inform the public about the government activity involved in the request, beyond the public’s right to know about government activity generally.”⁵

Based upon my review of the information contained in your request, I have determined that your request for expedited processing will be denied. You have not provided any evidence that information dissemination is your main professional activity, nor have you adequately demonstrated a particular urgency to inform the public regarding the subject matter of your request, beyond the public’s general right to know about government activity.

Since your request does not meet the criteria for expedited review, ICE will place your request in the queue for processing in the order in which it was received. Simple requests are answered more quickly and will be placed on the fast track of our multi-track processing system. More complex requests, including those calling for a particularly large volume of records, are segregated into a group designated as complex requests. These requests require significantly more processing time and are processed separately in the order in which received. Unfortunately, we cannot predict exactly when your request will be processed, as we currently have a backlog of such requests. We

¹ http://www.glahr.org/index.php?option=com_content&view=article&id=216%3Athe-georgia-latino-alliance-for-human-rights-condemns-hb-87-that-criminalizes-immigrants&catid=1%3Alatest&Itemid=82&lang=en; <http://www.ndlon.org/en/about-us>; and <http://www.acluga.org/about.html>.

² 6 C.F.R. § 5.5(d)(1)(i), (ii).

³ 6 C.F.R. § 5.5(d)(ii).

⁴ 6 C.F.R. § 5.5(d)(iii).

⁵ *Id.*

have, however, already initiated a search for responsive records. ICE is devoting additional staff and resources to reducing our backlog and is using its best efforts to process all requests with due diligence on a first-in, first-out basis.

As it relates to your fee waiver request, I have reviewed your letter thoroughly and have determined that you have not presented a convincing argument that the Georgia Latino Alliance for Human Rights, the National Day Laborer Organizing Network, and the American Civil Liberties Union Foundation of Georgia are entitled to a blanket waiver of fees.

The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your April 17, 2012 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because you have failed to demonstrate how the disclosure of the requested information would be likely to significantly contribute to the public's understanding.

Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

You have the right to appeal ICE's determination to deny your requests for media status, expedited review, and a fee waiver. Should you wish to do so, send your appeal and a copy of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email that entity at ogis@nara.gov or call 877-684-6448.

If you need to contact our office again about this matter, please refer to FOIA case number **2012FOIA11435**. This office can be reached at (202) 732-0600.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: Your April 17, 2012 FOIA Request

Exhibit C

U.S. Department of Homeland Security
500 12th Street SW, STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

May 25, 2012

JESSICA KARP
STAFF ATTORNEY
NATIONAL DAY LABORER ORGANIZING NETWORK
675 S. PARK VIEW ST. SUITE B
LOS ANGELES, CA 90057

RE: **ICE FOIA Case Number 2012FOIA11435**

Dear Ms. Karp:

This is regarding the processing of your April 17, 2012 Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE) seeking copies of the following records dated February 13, 2007 to the present:

1. Copies of I-213 forms for each individual transferred to ICE following an arrest by state or local law enforcement officials in Georgia between February 13, 2007 and the present for which the location of arrest is in Georgia, the Method of Location/Apprehension is coded OA ("Other Agency"), and the Narrative section mentions a Georgia state or local law enforcement agency.
2. Any data or statistics regarding individuals transferred to ICE following an arrest by state or local law enforcement officials in Georgia between February 13, 2007 and the present, including, but not limited to, data or statistics breaking down these individuals by criminal history, priority level, race, and/or country of origin.
3. All communications between ICE and Georgia state and local law enforcement agencies between February 13, 2007 and the present on the following topics:
 - a. The transfer of an individual/individuals from the state or law enforcement agency to ICE;
 - b. Claims of US citizenship by individuals subject to immigration detainers;
 - c. Complaints related to immigration detainers;
 - d. The 48-hour limitation on detention pursuant to an immigration detainer, and any claims that an individual has been detained beyond that limit;
 - e. Crime victims and witnesses;
 - f. Racial profiling; and
 - g. HB 87 (the Illegal Immigration Reform and Enforcement Act of 2011).
4. Copies of all immigration detainers (form I-247) issued by ICE to a Georgia law enforcement entity on or after January 1, 2011, as well as the records reflecting the following information:
 - a. The date on which the detainer was issued;
 - b. The date, if any, on which the detainer was cancelled or lifted, as well as the reason the detainer was cancelled or lifted;
 - c. The offense code, if any, and any records describing the meaning of the offense code;

- d. The date, if any, that the subject of the detainer was taken into ICE custody;
- e. The receiving agency, jail, or police department to whom the detainer was sent; and
- f. The nationality and/or country of origin of the subject of the detainer.

The FOIA provides for fees that may be assessed to process a FOIA request according to requestor's placement in one of the three fee categories.ⁱ Our acknowledgement of your request, dated April 23, 2012, informed you that you had been placed in the "all other" requestor category. Pursuant to the DHS implementing regulationsⁱⁱ, "all other" or non-commercial requestors are responsible to pay 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher.

In our letter dated April 23, 2012, we notified you that you would be contacted if the total cost for processing your request exceeded \$25.00. At this time, I estimate the total search and duplication expenses for processing your request will exceed \$25.00. Please confirm, in writing, the amount which you are willing to pay for the processing of your request. Please send your written confirmation directly to this office within 15 business days from the date of this letter to the following address:

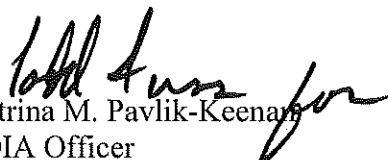
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009
(202) 732-0660 (fax)

In the alternative, you may narrow the scope of your request to reduce the universe of responsive records. If you wish to narrow the scope of your request, please send an amended request and indicate the processing fee amount you are willing to pay within 15 business days from the date of this letter. You may send your amended FOIA request to the address above, by facsimile to the number above, or by e-mail at ICE-FOIA@dhs.gov.

Pending receipt of your response, we will toll your request under the provisions of the FOIA. If we do not receive confirmation of the amount you are willing to pay, or an amended request from you within 15 business days from the date of this letter, we will assume you are no longer interested in obtaining the requested records and will consider your request withdrawn.

If you need to contact our office again about this matter, please refer to FOIA case number **2012FOIA11435**. This office can be reached at (202) 732-0600.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: Your April 17, 2012 FOIA Request
April 23, 2012 Acknowledgement Letter

ⁱ See 5 U.S.C. § 552(a)(4)(A)(ii)(I),(II),(III)

ⁱⁱ 6 C.F.R. §5.11

Exhibit D

June 11, 2012

Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009
FAX: 202-732-0660

BY FAX AND MAIL

Re: ICE FOIA Case No. 2012FOIA11435

To Whom It May Concern:

This letter is in response to FOIA Officer Catrina M. Pavlik-Keenan's letter of May 25, 2012, notifying the National Day Laborer Organizing Network, the ACLU of Georgia, and the Georgia Latino Alliance for Human Rights ("Requesters") that total duplication and search costs for processing this request are estimated to exceed \$25.

Requesters are planning to appeal ICE's denial of a fee waiver for their request. Requesters have not withdrawn their Request. Requesters will submit their appeal within the 60 days of the April 23, 2012 denial.

Sincerely,

A handwritten signature in black ink, appearing to read 'JK' or 'J. Karp', written over the printed name.

Jessica Karp
Staff Attorney
National Day Laborer Organizing Network

Enclosure: May 25, 2012 Fee Letter

U.S. Department of Homeland Security
500 12th Street SW, STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

May 25, 2012

JESSICA KARP
STAFF ATTORNEY
NATIONAL DAY LABORER ORGANIZING NETWORK
675 S. PARK VIEW ST. SUITE B
LOS ANGELES, CA 90057

RE: ICE FOIA Case Number 2012FOIA11435

Dear Ms. Karp:

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- d. The date, if any, that the subject of the detainer was taken into ICE custody;
- e. The receiving agency, jail, or police department to whom the detainer was sent; and
- f. The nationality and/or country of origin of the subject of the detainer.

The FOIA provides for fees that may be assessed to process a FOIA request according to requestor's placement in one of the three fee categories.ⁱ Our acknowledgement of your request, dated April 23, 2012, informed you that you had been placed in the "all other" requestor category. Pursuant to the DHS implementing regulationsⁱⁱ, "all other" or non-commercial requestors are responsible to pay 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher.

In our letter dated April 23, 2012, we notified you that you would be contacted if the total cost for processing your request exceeded \$25.00. At this time, I estimate the total search and duplication expenses for processing your request will exceed \$25.00. Please confirm, in writing, the amount which you are willing to pay for the processing of your request. Please send your written confirmation directly to this office within 15 business days from the date of this letter to the following address:

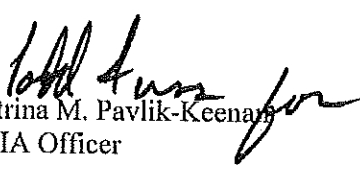
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009
(202) 732-0660 (fax)

In the alternative, you may narrow the scope of your request to reduce the universe of responsive records. If you wish to narrow the scope of your request, please send an amended request and indicate the processing fee amount you are willing to pay within 15 business days from the date of this letter. You may send your amended FOIA request to the address above, by facsimile to the number above, or by e-mail at ICE-FOIA@dhs.gov.

Pending receipt of your response, we will toll your request under the provisions of the FOIA. If we do not receive confirmation of the amount you are willing to pay, or an amended request from you within 15 business days from the date of this letter, we will assume you are no longer interested in obtaining the requested records and will consider your request withdrawn.

If you need to contact our office again about this matter, please refer to FOIA case number 2012FOIA11435. This office can be reached at (202) 732-0600.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: Your April 17, 2012 FOIA Request
April 23, 2012 Acknowledgement Letter

ⁱ See 5 U.S.C. § 552(a)(4)(A)(ii)(I),(II),(III)

ⁱⁱ 6 C.F.R. §5.11

* * * Communication Result Report (Jun. 11. 2012 11:24AM) * * *

13

Date/Time: Jun. 11. 2012 11:17AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
2128	Memory TX	12027320660	P. 3	OK	

Reason for error

E. 1) Hang up or line fail
 E. 3) No answer
 E. 5) Exceeded max. E-mail size

E. 2) Busy
 E. 4) No facsimile connection

June 11, 2012

Freedom of Information Act Office
 U.S. Immigration and Customs Enforcement
 500 12th Street, SW, Stop 5009
 Washington, DC 20536-5009
 FAX: 202-732-0660

BY FAX AND MAIL

Re: ICE FOIA Case No. 2012FOIA11435

To Whom It May Concern:

This letter is in response to FOIA Officer Catrina M. Pavlik-Keenan's letter of May 25, 2012, notifying the National Day Laborer Organizing Network, the ACLU of Georgia, and the Georgia Latino Alliance for Human Rights ("Requesters") that total duplication and search costs for processing this request are estimated to exceed \$25.

Requesters are planning to appeal ICE's denial of a fee waiver for their request. Requesters have not withdrawn their Request. Requesters will submit their appeal within the 60 days of the April 23, 2012 denial.

Sincerely,



Jessica Kaip
 Staff Attorney
 National Day Laborer Organizing Network

Enclosure: May 25, 2012 Fee Letter

Exhibit E

June 18, 2012

U.S. Immigration and Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Office
500 West 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

**Re: Freedom of Information Act Appeal of the Immigration and Customs
Enforcement Agency's Denial of a Fee Waiver and Expedited Processing for
FOIA case 2012FOIA11435**

To Whom It May Concern:

This is a Freedom of Information Act (FOIA) appeal of the determination of the Immigration and Customs Enforcement agency (ICE) to deny a fee waiver and expedited processing for FOIA request 2012FOIA11435.

Requesters seek records regarding collaboration between ICE and law enforcement agencies in Georgia. As described in the initial request of April 17, 2012, Requesters seek this information in order to allow the public to monitor the growing collaboration between federal immigration officials and Georgia's state and local police.

I. A fee waiver in this case is warranted

Requesters are entitled to a fee waiver on two separate grounds. First, requesters are entitled to a fee waiver because disclosure of the requested information is in the public interest. Second, Requesters are entitled to a fee waiver because they are representatives of the news media.¹

¹ The reason ICE has provided for denying Requesters a fee waiver is that "[Requesters] have failed to demonstrate how the disclosure of the requested information would be likely to significantly contribute to the public's understanding." See Letter of April 23, 2012 (enclosed). ICE does not suggest that Requesters have any commercial interest in disclosure and, indeed, Requesters, which are all 501(c)(3) not-for-profit organizations, have no commercial interest in the requested information.

A. Requesters are Entitled to a Public Interest Fee Waiver

The FOIA requires a fee waiver “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). DHS regulations provide that to be eligible for a fee waiver, the request must demonstrate that: (i) “Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government;” and (ii) Disclosure of the information is not primarily in the commercial interest of the requester.” 6 C.F.R. § 5.11(k)(1).

The second requirement of 6 C.F.R. § 5.11(k)(1) is unquestionably met, as Requesters are all 501(c)(3) not-for-profit organizations with no commercial interest in the information requested.

In assessing whether the first requirement is met, DHS regulations set forth four factors that component agencies must consider. *See id.* § 5.11(k)(2). As described below, each of these factors supports a fee waiver in this case.

1. *The subject of the request concerns “the operations or activities of the government”*—The request seeks information about the enforcement of federal immigration law in Georgia. It concerns the following “identifiable operations or activities of the federal government”: arrests made by ICE; detainers issued by ICE; removal proceedings pursued by ICE; and communication between ICE and state and local law enforcement officers in Georgia. 6 C.F.R. § 5.11(k)(2)(i). Records concerning these operations are “direct[ly] and clear[ly]” connected to government activities. *Id.*

2. *The information to be disclosed has a high “informative value” and is “likely to contribute” to an understanding of government operations or activities*—Each category of documents sought through this request was selected because of its value in contributing to an understanding of ICE’s operations in Georgia. None of the requested information, moreover, is already in the public domain. *See* 6 C.F.R. § 5.11(k)(2)(ii)

(“The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public’s understanding.”).

First, Requesters seek copies of Form I-213 for each individual transferred to ICE through state or local law enforcement agencies. Each I-213 includes a narrative section describing the circumstances of the arrest.² This will provide a comprehensive picture of the circumstances under which individuals are transferred from state and local law enforcement officials to ICE. Each I-213 also records detailed characteristics of the arrested individual. This information will contribute to an understanding of the characteristics of the individuals who are being transferred from police to ICE.

Second, Requesters seek data and statistics showing the criminal history, priority level, race, and country of origin of individuals transferred from Georgia law enforcement officers to ICE. This information will show whether individuals transferred from state and local law enforcement officials fit within ICE’s stated priority deportation categories. Although ICE’s recent announcements regarding prioritized enforcement have been highly publicized, there is considerable dispute as to whether those priorities have actually been implemented on the ground.³ The requested information will shed light on that dispute. The requested information will also show whether individuals of certain races or nationalities are being disproportionately targeted for deportation, a matter of obvious public interest.

Third, Requesters have asked for records of communications between ICE and Georgia law enforcement officers on a select number of key topics. These communications will shed light on, *inter alia*, mistaken detentions of U.S. citizens, racial profiling, the effect of police involvement in immigration enforcement on crime victims and witnesses, and other important civil rights and public safety issues.

Finally, Requesters seek information about immigration detainers issued by ICE for individuals in the custody of Georgia law enforcement officers. The requested

² See Sample Form I-213, Exhibit A.

³ See Julia Preston, *U.S. to Review Cases Seeking Deportations*, New York Times, Nov. 17, 2011, available at <http://www.nytimes.com/2011/11/17/us/deportation-cases-of-illegal-immigrants-to-be-reviewed.html>, Exhibit B; American Immigration Lawyers’ Association, *Holding DHS Accountable on Prosecutorial Discretion* (Nov. 2011), available at www.aila.org/content/default.aspx?docid=37615 (finding that “most ICE offices have not changed their practices since the issuance of these new directives”), Exhibit C.

information will show the number and location of individuals being held on immigration detainers at ICE's request in Georgia's jails and prisons. It will also reveal the rate at which detainers are placed erroneously on U.S. citizens and lawful immigrants, and provide information about the race, nationality, and criminal history of individuals subject to immigration detainers.

3. *Disclosure of the requested information will contribute to public understanding*—Requesters are extraordinarily well positioned to ensure that disclosure of the requested information contributes to public understanding. Requesters have unparalleled expertise in the subject area of state and local police involvement in federal immigration enforcement. Requesters also have a demonstrated ability and intention to effectively convey information to the public.⁴

a. Requesters' expertise in the subject area. All three Requesters are experts in the subject matter of this request. Over the past three years, the American Civil Liberties Union Foundation of Georgia (ACLU of Georgia) has written two authoritative reports on police involvement in immigration law enforcement in Georgia's Gwinnet and Cobb Counties.⁵ These reports are the only existing in-depth studies of the impact of police and ICE collaboration in Georgia. Similarly, Requester NDLOM has co-authored a national report on the Secure Communities program, which has been widely distributed both in print and online.⁶ NDLOM is also a co-host of the "Uncover the Truth" website—located at <http://uncoverthetruth.org>—a prominent resource for individuals seeking to understand collaboration between ICE and local police in general, and the Secure Communities program in particular. Finally, GLAHR has, for many years, operated a hotline to provide

⁴ Moreover, as discussed below, *see* Part I.B., Requesters are entitled to classification as representatives of the news media, in which case it is "presumed" that "disclosure of the requested information will contribute to 'public understanding.'" 6 C.F.R. § 5.11(k)(2)(iii).

⁵ ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (March 2010), available at www.acluga.org/gwinnettracialreportfinal.pdf, Exhibit D; ACLU Foundation of Georgia, *Terror and Isolation in Cobb County: How Unchecked Police Power Under 287(g) has Torn Families Apart and Threatened Public Safety* (Oct. 2009), available at www.acluga.org/racial%20profiling%20Cobb.pdf, Exhibit E.

⁶ NDLOM, *et. al*, *Restoring Community: A National Community Advisory Report on ICE's Failed 'Secure Communities' Program* (Aug. 2011), available at altopolimigra.com/s-comm-shadow-report/, Exhibit F.

support to members of Georgia's Latino community on immigration-related issues.⁷ The hotline has brought GLAHR into contact with countless individuals placed into deportation proceedings as a result of contact with police. This has given GLAHR an unparalleled expertise in the on-the-ground impact of increasing police involvement in immigration enforcement.

b. Requesters' ability and intention to effectively convey information to the public. Requesters, both individually and collectively, have a demonstrated ability and intention to convey to the public information obtained through this request.

The ACLU of Georgia routinely obtains information about government activity (including through FOIA requests), analyzes that information, and widely publishes and disseminates that information to the press and to the public in a variety of ways, including:

- A biweekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members).⁸
- Regularly published reports about government activity and civil liberties issues.⁹ These reports are based on analysis of information derived from various sources, including information obtained from the government through FOIA requests.
- Books, "Know Your Rights" materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and

⁷ See Declaration of Adelina Nichols, Exhibit G.

⁸ Archived copies can be viewed here: <http://archive.constantcontact.com/fs022/1102424221285/archive/1102688938336.html>. Sample newsletters are provided as Exhibit H. The electronic newsletter is also posted on the ACLU of Georgia's website, www.acluga.org, and Facebook page, www.facebook.com/pages/ACLU-of-Georgia/116855228000.

⁹ See, e.g., ACLU of Georgia, *Prisoners of Profit, Immigrants and Detention in Georgia* (May 2012), available at www.acluga.org/Prisoners_of_Profit.pdf, Exhibit I; ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (March 2010), available at www.acluga.org/gwinnettracialreportfinal.pdf, Exhibit D; Alexandra Stanczyk, ACLU of Georgia, *Best Practices for Dismantling the School to Prison Pipeline*, Aug. 8, 2007, available at www.acluga.org/docs/schooltoprison.pdf, Exhibit J.

liberties.¹⁰

- A heavily visited website, www.acluga.org, which addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues the ACLU focuses upon, including features on information obtained through the FOIA.¹¹

NDLON similarly analyzes and publishes information about government activity in many different ways, including through reports, factsheets, and know-your rights materials.¹² NDLON also hosts and co-hosts a number of websites that disseminate information and analysis—including analysis of information obtained through the FOIA and other sources—to wide audiences.¹³

Finally, GLAHR, together with three partners, runs a radio station on 1310AM.¹⁴ The station runs programming from 7:30am to 7:00pm, including “GLAHR Informa,” a news segment produced by GLAHR, which runs from 9:00am to 11:00am daily. The station’s programming includes international, national, and local news; policy analysis; immigration-related issues; history; Latin American music; and shows directed toward youth and students and toward members of GLAHR. The station is heard throughout the

¹⁰ See, e.g., ACLU of Georgia, Frequently Asked Questions about the Georgia Racial Profiling Law (May 2012), available at <http://www.acluga.org/FAQonHB87.pdf>, Exhibit K; ACLU of Georgia and Georgia Detention Watch, *Securely Insecure: The Real Costs, Consequences & Human Face of Immigration Detention*, available at <http://www.acluga.org/ImmigrationDetentionFactSheet.pdf>, Exhibit L; ACLU of Georgia, *Get Your Vote Back* (May 2007), available at www.acluga.org/docs/SWAT_Felon_Voting_101.pdf, Exhibit M.

¹¹ See, e.g., Press Release, *ACLU Sues Pentagon for Documents on Peace Groups*, June 14, 2006, available at <http://www.aclu.org/national-security/aclu-sues-pentagon-documents-peace-groups>, Exhibit N. See also Press Release, *ACLU Intervenes In Georgia Voting Rights Act Challenge*, July 7, 2010, available at <http://www.aclu.org/voting-rights/aclu-intervenes-georgia-voting-rights-act-challenge>, Exhibit O.

¹² See, e.g., NDLON, CCR, Cardozo Immigration Justice Clinic, *Briefing Guide to "Secure Communities"--ICE's Controversial Immigration Enforcement Program* (Aug. 2010), available at <http://ccrjustice.org/files/Secure%20Communities%20Fact%20Sheet%20Briefing%20guide%208-2-2010%20Production.pdf>, Exhibit P; NDLON, CCR, Cardozo Immigration Justice Clinic, *A Briefing Guide to the Secure Communities October 2, 2010 "Mandatory Memo,"* (Jan 2012), available at <http://ccrjustice.org/files/1-9-12-Briefing-Guide-Oct-2-Mandatory-Memo.pdf>, Exhibit Q; NDLON, CCR, Cardozo Immigration Justice Clinic, *Secure Communities and Next Generation Identification: The FBI's "Big Brother" Surveillance Agenda* (July 2011), available at <http://uncoverthetruth.org/wp-content/uploads/7-6-11-Scomm-NGI-Fact-Sheet.pdf>, Exhibit R.

¹³ See www.ndlon.org; <http://uncoverthetruth.org>.

¹⁴ See Declaration of Adelina Nichols, Exhibit G. To listen to the station via internet, visit www.glahr.org.

Metro Atlanta Area, and is transmitted around the world via internet. GLAHR plans to disseminate information obtained through this request by means of its radio programming. GLAHR will also disseminate information through its regular meetings with community members in Atlanta and throughout the state.¹⁵ Through radio and in-person communication, GLAHR will be able to disseminate information obtained through this request to large groups of interested community members who may not have access to print and online sources.

4. *Disclosure of the requested information is likely to contribute “significantly” to public understanding of government operations or activities*—As described above, *see supra* Parts I.A.1–3, the requested information is likely to contribute to the public’s understanding of government operations and activities. This contribution will be significant. None of the information sought by Requesters currently exists in the public domain. Nor are the requested records duplicative of existing information. To the contrary, there is widespread confusion in Georgia regarding the impact of increased police collaboration with ICE.¹⁶ Although the public is aware of the existence of increased collaboration between local law enforcement and ICE—including through 287(g), Secure Communities, and Georgia’s state law, HB 87—there remains little understanding about how that collaboration plays out on the ground. Indeed, other than firsthand accounts from community members,¹⁷ very little information is available at all regarding the mechanics and impact of increased police involvement in immigration enforcement in Georgia. Through this request, Requesters seek to change that.

For example, the I-213s sought by Requesters contain information about collaboration between police and ICE that is qualitatively different than any other

¹⁵ See Declaration of Adelina Nichols, Exhibit G.

¹⁶ See, e.g., *New law spawns mistrust of police by Hispanics*, Merrillville Post-Tribune, July 30, 2007, Exhibit S (raising questions about crime victims placed into deportation proceedings as a result of police enforcement of immigration law); Andria Simmons, *Police defend work with ICE*, Atlanta Journal and Constitution, April 26, 2010 (reporting that Department of Homeland Security inspector general found that “it’s difficult to determine if the [287(g)] program is achieving its stated goal of deporting dangerous criminals”), Exhibit T; Louie Brogdon, *Police sidestep immigration entanglements*, The Brunswick News, Feb. 17, 2011 (reporting that where laws like HB 87 “would leave local police is unknown”); *ACLU alleges racial profiling*, The Augusta Chronicle, Oct. 13, 2009 (reporting that Cobb County Sheriff refused to return calls or respond to questions about the 287(g) program), Exhibit U.

¹⁷ See *supra* note 5. Cf. Exhibit U.

publicly available information. These forms in general—and the narrative sections in particular—will allow the public to understand the mechanics of police involvement in immigration law and assess how that involvement is impacting the work of both local police and federal immigration officers.

The requested data and statistical information on individuals transferred from Georgia law enforcement officers to ICE will also provide new, currently unavailable information. Although ICE currently provides on its website updated statistics on the Secure Communities program, including a breakdown of the number of individuals deported according to “priority level” and the county and state in which they were first apprehended, it does not appear to provide similar information for the Criminal Alien Program, the 287(g) program, or other means by which Georgia law enforcement transfer individuals to ICE.¹⁸ As a result, it is not possible to obtain a clear picture of the number and characteristics of individuals transferred from Georgia law enforcement officials to ICE.

Moreover, even the available Secure Communities information does not break down individuals by race or nationality, and it lumps individuals with very varied criminal histories in the same categories.¹⁹ For example, “Level 1” consists of all “aggravated felonies,” a category that includes offenses ranging from shoplifting and second-offense marijuana possession to rape and murder.²⁰ And “Level 3” includes misdemeanors ranging from driving under the influence to driving without a license, two very different offenses that are perceived differently by the public and by many law enforcement officers. As a result of these gaps in information, it is not currently possible to obtain a full understanding of who is being targeted for deportation as a result of collaboration between ICE and Georgia law enforcement officers. Again, disclosure of the information sought by requesters would change that.

Next, requesters have sought communications between ICE and Georgia law

¹⁸ See ICE FOIA Library at <http://www.ice.gov/foia/library/>.

¹⁹ See Secure Communities Nationwide Interoperability Statistics - Year to Date FY 2012, at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2012-to-date.pdf.

²⁰ See *United States v. Christopher*, 239 F.3d 1191 (11th Cir. 2001) (misdemeanor shoplifting is an aggravated felony); *United States v. Sanchez-Villlobos*, 412 F.3d 572 (5th Cir. 2005), *overruled on other grounds by Lopez v. Gonzales*, 549 U.S. 47 (2006) (second offense misdemeanor drug possession is an aggravated felony).

enforcement officers on a select number of key topics related to state and local police enforcement of immigration law. These communications are not currently publicly available. Nor are they duplicative of any other publicly available information. Indeed, they will provide much-needed insight to problems that have been associated with the growing collaboration between Georgia police and ICE, and how the agencies have dealt with those problems.

Finally, Requesters have sought information about immigration detainers. The requested information constitutes a much-needed update to information disclosed by ICE as a result of previous FOIA litigation. The previously disclosed information, which is now publicly available, pertains to immigration detainers issued through 2010.²¹ The currently requested information would provide information as to detainers issued to state and local law enforcement agencies in Georgia from January 1, 2011 through the present day.

B. Requesters are also Entitled to a Fee Waiver Because they are Representatives of the News Media

In addition to qualifying for a public interest fee waiver, Requesters are also entitled to a fee waiver as representatives of the news media.

DHS regulations provide for a waiver of search fees for “representatives of the news media.” 6 C.F.R. §§ 5.11(c)(1), (d)(1). Representative of the news media is defined to mean “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. . . . Examples of news media entities include television or radio stations broadcasting to the public at large.” 6 C.F.R. § 5.11(b)(6).

As described above, GLAHR operates a radio station and produces daily programs broadcasting news to the public at large. GLAHR intends to disseminate on those programs its analysis of information obtained through this request. Because GLAHR is “actively gathering news” for its radio show, which “broadcast[s] to the

²¹ See National Immigrant Justice Center, How Have ICE Immigration Detainers Affected Your Community, at <http://www.immigrantjustice.org/ICEdetainerdata>.

public at large,” GLAHR necessarily qualifies as a representative of the news media and is entitled to a fee waiver. *Id.*

In addition, the ACLU of Georgia and NDLON constitute representatives of the news media, as that term was defined by the Court of Appeals for the D.C. Circuit in *National Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381 (D.C. Cir. 1989). As the Court explained: “A representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.* at 1387. The Court found that the Plaintiff, National Security Archive, qualified as a representative of the news media because it “gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aides; and distributes the resulting work to the public.” *Id.*

Both NDLON and the ACLU of Georgia also “gather[] information from a variety of sources; exercise[] a significant degree of editorial discretion in deciding what documents to use and how to organize them; devise[] indices and finding aides; and distribute[] the resulting work to the public.” *Id.* This is exemplified by the following documents:

- NDLON, *et. al.*, *Briefing Guide to “Secure Communities”--ICE's Controversial Immigration Enforcement Program*,²²
- NDLON, *et. al.*, *Briefing Guide to the Secure Communities October 2, 2010 “Mandatory Memo”*,²³
- NDLON, *et. al.*, *Secure Communities and Next Generation Identification: The FBI's “Big Brother” Surveillance Agenda*,²⁴
- NDLON, *et. al.*, *Restoring Community: A National Community Advisory Report on ICE’s Failed ‘Secure Communities’ Program*,²⁵
- ACLU of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)*,²⁶

²² See *supra*, note 12, Exhibit P.

²³ See *supra*, note 12, Exhibit Q.

²⁴ See *supra*, note 12, Exhibit R.

²⁵ See *supra*, note 6, Exhibit F.

- ACLU Foundation of Georgia, *Terror and Isolation in Cobb County: How Unchecked Police Power Under 287(g) has Torn Families Apart and Threatened Public Safety*,²⁷
- ACLU of Georgia, *Prisoners of Profit, Immigrants and Detention in Georgia*.²⁸
- ACLU of Georgia and Georgia Detention Watch, *Securely Insecure: The Real Costs, Consequences & Human Face of Immigration Detention*.²⁹

Moreover, a number of courts have held explicitly that the ACLU is entitled to news media status. *See, e.g., ACLU of Wash. v. Dep't of Justice*, No. C09cv0642, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011); *ACLU v. Dep't of Defense*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004); *Serv. Women's Action Network v. Dep't of Defense*, No. 3:11cv1534 (D. Conn. May 14, 2012) (granting the ACLU news media status and noting that "organizations like the ACLU are regularly granted news representative status").

II. Expedited Processing is Warranted

Requesters are also entitled to expedited processing. Pursuant to statute and regulation, expedited processing should be granted where the requester is a "person primarily engaged in disseminating information," and there is "an urgency to inform the public about an actual or alleged federal government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1). Requesters clearly satisfy these requirements.

A. Requesters are primarily engaged in disseminating information

Requesters' engagement in disseminating information is described above and in their initial request of April 17, 2012. As also described therein, Requesters have

²⁶ *See supra*, note 5, Exhibit D.

²⁷ *See supra*, note 5, Exhibit E.

²⁸ *See supra*, note 9, Exhibit I.

²⁹ *See supra*, note 10, Exhibit L.

particular expertise and experience in disseminating information related to immigration enforcement by state and local police.

B. There is an urgency to inform the public about the federal government activities that are the subject of this Request

Across the country, a debate is raging about immigration enforcement. As federal courts have recognized:

At present, there is a vigorous public debate on the topic of targeted immigration enforcement, most notably as to whether such efforts should prioritize aliens with documented criminal histories, as opposed to individuals who have committed only civil immigration law violations . . . There is also widespread public debate on the related issue of whether and to what extent local police should be involved with federal immigration enforcement efforts.

Hernandez v. U.S. Customs and Border Protection Agency, 2012 WL 398328, *9 (E.D. La. Feb. 7, 2012) (finding that release of information on these topics was in the public interest).

In Georgia, this topic has received even greater attention. Georgia has become one of the states to most strongly embrace police involvement in immigration enforcement. Widespread participation in the 287(g) program, enthusiasm for CAP and Secure Communities, and the adoption of a state immigration law, HB 87 are just a few examples of this phenomenon.

The impact of increased police involvement in immigration law is just beginning to be felt. As the change registers, passionate debates are raging on the editorial pages of prominent papers, protesters are gathering in the streets, and new legislation—at both the state and local level—is being considered.³⁰

This request seeks to provide essential information that is urgently needed to inform this current, ongoing debate. Accordingly, expedited processing should be granted.

³⁰ See, e.g., Kate Brumback, *Protesters rally against immigration bill*, May 2, 2011, Exhibit V; Errin Haines, *Immigration law protesters rally in Atlanta*, The Telegraph, July 3, 2011, Exhibit W; Editorial, *It Gets Even Worse*, New York Times, July 3, 2011, Exhibit X; Editorial, *Solving the Farm Crisis*, The Valdosta Daily Times, June 16, 2011, Exhibit Y.

...

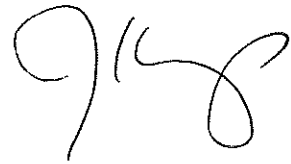
For the aforementioned reasons, Requesters are entitled to expedited processing and a fee waiver, and ICE's initial determination to the contrary should be reversed. Thank you for your consideration and attention to this appeal.

Sincerely,



Adelina Nicholls
Executive Director
Georgia Latino Alliance
for Human Rights

Azadeh Shahshahani
National Security/Immigrants' Rights
Immigrants' Rights Project Director
ACLU Foundation of Georgia



Jessica Karp
Staff Attorney
National Day Laborer
Organizing Network

Exhibit F

U.S. Department of Homeland Security
800 North Capitol Street, NW #585
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

September 25, 2012

JESSICA KARP, ESQ.
NATIONAL DAY LABORER ORGANIZING NETWORK
675 S. PARK VIEW ST. SUITE B
LOS ANGELES, CA 90057

RE: OPLA12-529, 2012FOIA11435

Dear Ms. Karp:

This is in response to your letter dated June 18, 2012, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records regarding collaboration between U.S. Immigration and Customs Enforcement (ICE) and law enforcement agencies in Georgia.

ICE initially denied your request in part by denying your request for expedited processing and by denying your request for a fee waiver. You have appealed the decision to deny your request for a fee waiver and the decision to deny your request for expedited processing. ICE has further reviewed your request in question that gave rise to this partial denial of your request. Our analysis follows.

As it relates to your request for expedited processing, a compelling need must be shown in order to qualify for expedited processing¹. In the present instance, no showing has been made that the failure to obtain the records quickly could reasonably be expected to pose an imminent threat to life or physical safety². You have argued that there is an "urgent need" to inform the public regarding ICE's collaboration with local law enforcement agencies³, including, among other things, "widespread participation in the 287(g) program". Considering the length of the ongoing relationship between ICE and the State of Georgia, including a 287(g) Memorandum of Agreement signed by the Governor of Georgia July 27, 2007⁴, we find the urgency to release records regarding that continued relationship now five years after the MOA was signed fails to satisfy the "urgency" requirement sufficient to satisfy 5 U.S.C. § 556(a)(6)(E)(v)(II).

As you your request for a fee waiver, fee waivers are properly granted "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."⁵ More specifically, the Department of Justice issued revised fee waiver policy guidance on April 2, 1987.⁶ These regulations set forth six factors to examine in

¹ 5 U.S.C. § 556(a)(6)(E)

² 5 U.S.C. § 556(a)(6)(E)(v)(I)

³ See, 5 U.S.C. § 556(a)(6)(E)(v)(II)

⁴ <http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/stateofgeorgiadepartmentofpublicsafety.pdf>

⁵ See, *Piper v. U.S. Dep't of Justice*, 294 F. Supp. 2d 16, 24 (D.D.C. 2003).

⁶ See, 5 U.S.C. § 552(e); see also *FOIA Update*, Vol. XIX, No. 3, at 6; *FOIA Update*, Vol. XIV, No. 3, at 8.

determining whether the applicable legal standard for fee waiver has been met. Those six factors are as follows: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

You have appealed, specifically indicating that your request satisfied each of the factors listed above.

As to the first requirement, there is no questioning that the requested information concerns the operations or activities of the government. Within the request, documents sought specifically include I-213 forms issued by the agency, statistics created and maintained by the agency, communications between ICE and a local law enforcement agency, and other documentation concerning government activities.

The second requirement requires that the disclosure "likely contribute" to the understanding of the public at large regarding specific government operations or activities. Many of the records, such as state criminal statistics, are publicly available.⁷ However, this is not determinative as to the fee waiver request as there are additional items included in the request which are not readily available to the public.

The third requirement necessitates that disclosure contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.⁸ More specifically, agencies must evaluate the ability of the requester to disseminate the information.⁹ Furthermore, the intended method of that dissemination¹⁰ must be included in the request for a fee waiver.

In the case at hand, the original request submitted listed a variety of dissemination methods, including emailed newsletters, and records posted online for interested individuals to access. You have argued that your position as a "nonprofit, nonpartisan organization" makes you "well situated to disseminate the information gained from this request to the general public." As an aside, "non-profit" status is not determinative of the commercial nature of information for the purposes of the fifth factor in assessing the propriety of a fee waiver.¹¹ In the case at hand, the requested records include reams of generic I-213's and I-247 records relating to individuals transferred from local law enforcement agencies whose privacy information would be redacted. Redundant copies of anonymized government forms, produced at significant public expense, would not contribute significantly to the public understanding of government activities.

⁷ See, http://gbi.georgia.gov/00/channel_modifieddate/0,2096,67862954_87981396,00.html.

⁸ See, Forest Guardian v. U.S. Dept. of Interior, 416 F.3d at 1179 (10th Cir. 2005).

⁹ Orloff, No. 98-2819, slip op. at 21 (D.D.C. Mar. 22, 2002).

¹⁰ Hall v. CIA, No. 04-0814, 2005 WL 850379, at 7 (D.D.C. Apr. 13, 2005).

¹¹ Critical Mass Energy Project v. NRC, 830 F.2d 278, 281 (D.C. Cir. 1987).

It is not necessary to determine the commercial nature of the information requested, as the request fails to specify the significant contribution to the public understanding that would result from the requested records.

You also have argued that you should be entitled to a fee waiver as "a representative of the news media." Your assertion is without merit, as the acknowledgment letter, issued to you on April 23, 2012, clearly assigned you to the "non-commercial" fee category, and that you were not assigned the category of a "representative of the news media." You have not appealed the fee category assigned to you, and as such, any arguments regarding fees assessed to you based upon an assertion that the requester is a representative of the news media are moot.

As such, the determination regarding the denial of a fee waiver request was proper in all respects under the applicable provisions of 5 U.S.C. § 552 cited above.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

This decision is the final action of U.S. Immigration and Customs Enforcement concerning your FOIA/PA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA12-529** and the FOIA case number, which is **2012FOIA11435**.

Sincerely,

Catherine Gonzalez Gallego
for
Susan Mathias
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security